

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AMY M. HELM

Claimant

VS.

AMARR GARAGE DOOR

Respondent

AND

AMERICAN HOME ASSURANCE CO.

Insurance Carrier

Docket No. 1,002,412

ORDER

Claimant requested review of the October 11, 2005 Order Regarding Post Award Medical Care by Administrative Law Judge Brad E. Avery. The Board heard oral argument on January 10, 2006.

APPEARANCES

Chris Miller of Lawrence, Kansas, appeared for the claimant. Matthew Crowley of Topeka, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the December 14, 2005 Award, together with the following additional testimony and exhibits: the transcript of the Post-Award Hearing held June 7, 2005; the deposition of Dr. Lynn Ketchum taken July 20, 2005, with exhibits one and two; the deposition of Dr. Robert Warner taken September 20, 2005, with exhibits one through three; and the deposition of Dr. Chris Fevurly taken on September 26, 2005, with exhibits one and two.

ISSUES

The Administrative Law Judge (ALJ) found that the elbow injury for which claimant was seeking treatment was not the subject of the original award and he, therefore, had no jurisdiction over claimant's post-award request for medical treatment in this docketed claim.

Claimant argues that the ALJ erred in finding she failed to prove the medical treatment sought for her left elbow was the subject of the original award. Claimant contends her treating physician, Dr. Lynn Ketchum, had documented her elbow condition before the award but believed her symptoms would improve with rest. Dr. Ketchum recognized that her elbow condition was related to her work injuries. Accordingly, claimant contends the ALJ has jurisdiction over claimant's request for medical treatment. Claimant asserts she is entitled to additional medical care since her left elbow condition has deteriorated since the original Award.

Respondent argues the ALJ's order should be affirmed and the demand for future medical treatment should be denied under the doctrine of res judicata and/or because the recurrence and/or worsening of claimant's left elbow condition is not the result of her work for respondent but due to an intervening cause. Additionally, the respondent requests the claimant's application for post-award medical be dismissed because no request has been made for the specific treatment that was ultimately recommended by the various physicians.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant worked for respondent approximately two and one-half years sorting end styles. This position required her to use her hands to grab the end styles, set them on a table, tear them apart, carry them over, set them on a table and stack them in both sides of the machine. In March 2001, claimant began having difficulties with tingling and numbness in her hands, which worsened with time. She went to Dr. Robert Satake, a neurologist, on February 11, 2002, and he performed nerve conduction tests. She was sent to Dr. Michael Geist by respondent on February 15, 2002. He gave her splints and restricted the use of her hands. She was seen by Dr. Scott Thellman on March 5, 2002, who indicated that his examination and the EMG and nerve conduction tests indicated claimant had bilateral carpal tunnel syndrome and would benefit from carpal tunnel release of both wrists. Claimant was also seen by Dr. Daniel Weed, an orthopedic surgeon on April 5, 2002, who likewise diagnosed her with bilateral carpal tunnel syndrome and recommended surgery. Claimant left her employment at respondent in July 2003. In November 2003, she started employment with NCS Pearson working on a keyboard.

When claimant was asked about her complaints at a preliminary hearing on April 12, 2002, she testified:

Well, this, just my left, my right hand, just right in here, but my left one goes all the way up to my elbow. Sometimes it's a shocking pain clear up—kind of like something shocking me.¹

At the time of the regular hearing held on July 20, 2004, claimant was post-surgery for bilateral carpal tunnel syndrome and was complaining of a stabbing pain in her left elbow that came and went. She complained of some tingling in her hands and said she did not have a full grip. However, she said she no longer had complete numbness. On October 14, 2004, claimant's evidentiary deposition was taken, at which time she testified that her left hand "feels like there is a knife jabbed in it. My thumb feels like it's stuck (indicating), swelled up. . . . My elbow feels like someone's stabbing it."²

Claimant was first seen by Dr. Lynn Ketchum, who is board certified in plastic surgery with additional qualifications in surgery of the hand, on September 17, 2002, at the request of respondent. She had previously had a carpal tunnel release on her left wrist which had been performed by Dr. Thellman, and she still had tenderness around the incision four months post-operatively. Claimant complained to Dr. Ketchum of a burning pain in her "left distal forearm volarly and in the posterior aspect of the forearm proximally by the elbow."³ Dr. Ketchum performed a flexor tenosynovectomy on claimant's right wrist on November 12, 2002. Dr. Ketchum saw claimant post-operatively on January 27, 2003, at which time he recommended a flexor tenosynovectomy of the left wrist because of significantly elevated nerve conduction studies. This surgery was performed on April 8, 2003. He released claimant from treatment on August 25, 2003, noting she would be seen on an as-needed basis. He gave her a 10 percent permanent partial impairment rating of each upper extremity, for a combined rating of 12 percent to the body as a whole.

On March 22, 2004, Dr. Ketchum wrote claimant's attorney, stating that claimant had complaints of "burning pain of her left upper extremity that radiates to the shoulders and neck, with nodules in those areas."⁴ Dr. Ketchum recommended claimant be seen by a physiatrist.

Robert Warner, D.C., examined claimant at the request of claimant's attorney on August 12, 2003. Dr. Warner diagnosed claimant with postsurgical mild bilateral carpal

¹ P.H. Trans. (Apr. 12, 2002) at 14.

² Helm Depo. (Oct. 14, 2004) at 34.

³ Ketchum Depo. (Sept. 1, 2004), Ex. 1 at 37.

⁴ *Id.* at 1

tunnel syndrome and chronic tendinitis of the left elbow. He testified that claimant's condition was caused, aggravated or accelerated as a result of her work for respondent. He rated claimant as having a 17 percent permanent partial impairment to the left upper extremity and a 10 percent permanent partial impairment to the right upper extremity, using the AMA *Guides*⁵, which combines for a 15 percent permanent partial impairment to the body as a whole. Of the 17 percent permanent partial impairment to the left upper extremity, 8 percent was for the tendinitis in the elbow. He testified that claimant's condition is chronic and said she will continue to have flare-ups due to activities of normal daily living, and that analgesics, anti-inflammatory medicine or physical medicine (ultrasound, massage or trigger point therapy and electric muscle stimulation) may keep the symptoms to a minimum.

Dr. Chris Fevurly is board certified in internal medicine and preventative medicine with a certification in occupational medicine. He is also a board certified medical examiner and independent medical examiner. Claimant saw Dr. Fevurly on April 14, 2004, at the request of respondent. At that time he believed she had no need for further surgery for her carpal tunnel and did not think her elbow symptoms were severe enough that it was likely she would need to have surgery to her elbows. He opined that her elbow condition could be controlled with over-the-counter anti-inflammatory drugs or possibly a Cortisone injection. He further testified that claimant told him the elbow pain did not start until after her first carpal tunnel surgery in May 2002 and that the pain was worse after she started working at NCS Pearson.

The original Award was entered on December 14, 2004. The ALJ adopted the opinion of Dr. Fevurly that claimant had "bilateral carpal tunnel [syndrome] condition . . . as the result of her work with the respondent."⁶ The ALJ then adopted the assessment of Dr. Ketchum and found that claimant had a 12 percent functional impairment to the body as a whole. Although claimant would have been entitled to a work disability, the ALJ found that claimant's functional impairment was greater than her wage loss averaged with her task loss, and therefore based her permanent partial disability award on her percentage of functional impairment. The Award only discusses the diagnosis of carpal tunnel syndrome and overuse, with the symptoms being in her hands. There is no mention of the elbows in the ALJ's Award. The ALJ found the date of accident to be February 14, 2002, "the last date claimant performed her regular [job] duties"⁷ before beginning light duty work for respondent. Claimant last worked for respondent in July 2003.

⁵ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

⁶ ALJ Award (Dec. 14, 2004) at 2.

⁷ *Id.* at 4.

On January 4, 2005, claimant filed an Application for Post Award Medical requesting “reasonable and necessary continuing treatment of work injuries.”⁸ Claimant returned to Dr. Ketchum on January 25, 2005. At that time he diagnosed her as having left medial humeral epicondylitis with tenderness over the left medial humeral epicondyle and a metacarpal boss of her right wrist. He prescribed Naprosyn/lidocaine cream to be massaged in three times a day and advised her to avoid repetitive gripping more than 30 percent of the time. He recommended autologous whole blood injections around the right lateral humeral epicondyle if the problem did not resolve with the cream.

Dr. Ketchum stated that when claimant returned with complaints concerning her left elbow, he reviewed her medical records and the only complaints he could find relating to her medial and humeral epicondyle was on his initial examination of her on September 17, 2002, at which time the epicondylitis was mild. At that time, claimant was doing light-duty work at respondent. Dr. Ketchum stated that at the time, he felt that while claimant was recuperating from her carpal tunnel surgery, her elbows would be rested and would heal.

Dr. Ketchum last saw claimant on July 11, 2005, at which time he noted she had complaints of continued spasming of her hands, but he indicated there was no treatment for that condition. He also said claimant reported pain in the left medial epicondylar region and right over the posterior aspect of the left elbow, for which he prescribed Icy-Hot patches and Motrin, both of which are over-the-counter medications. He stated that when he had previously seen claimant in March 2005, he recommended Naprosyn/lidocaine, which required a prescription. He stated treatment with Icy-Hot patches and Motrin was basically the same treatment as his prescription for Naprosyn/lidocaine cream but are over-the-counter medications.

Dr. Ketchum testified that he did not expect that claimant’s job duties at her subsequent employment with NCS Pearson involved forceful gripping and therefore would not have aggravated her condition. In a letter to claimant’s attorney dated March 17, 2005, Dr. Ketchum stated:

It is my opinion that the metacarpal boss was not caused by but aggravated by her work at [respondent] and that the epicondylitis was caused by her work at [respondent] and not by her work as a clerical employee at NCS Pearson.⁹

However, in a letter dated July 11, 2005, Dr. Ketchum said the metacarpal boss was not work related. At his deposition, Dr. Ketchum again opined that the metacarpal boss was not related to her work at respondent. Although he related the onset of her elbow symptoms to her work with respondent, he also agreed that her epicondylitis was

⁸ Form K-WC E-4 (filed Jan. 4, 2005).

⁹ Ketchum Depo. (July 20, 2005), Ex. 2 at 12.

exacerbated by her subsequent and ongoing activities. However, his testimony in this regard was equivocal.

Q. (By respondent's attorney) So the best that you could testify to here is that the work at AMARR possibly could have caused the epicondylitis as just as likely as the other activities of the weight lifting and being a single mother of a single child?

A. Correct.

. . . .

Q. Therefore, since she's come back to you, can we assume and is it your opinion that her activities subsequent to last seeing you in October 03 has [*sic*] caused an exacerbation of her condition for which she's now seeking additional medical treatment.

A. Yes, that's logical.

. . . .

Q. (By claimant's attorney) And, doctor, an individual like Ms. Helm that already has diagnosed epicondylitis, is that individual more easily subject to aggravation or intensification of that condition?

A. Yes. Once those tissues are injured, they are more susceptible to injury than they were before they were injured.

Q. For an individual like that, could everyday activities aggravate that condition that would not occur if the individual had not already suffered epicondylitis?

A. Well, I'm somewhat of an expert in that condition as I have had it three times. And I can tell you that it does take forceful gripping to do it, it's not everyday activities unless everyday activities involve forceful gripping.

Q. And when we talk about forceful gripping, I gather that operating a computer would not be considered forceful gripping?

A. Right.

Q. And you wouldn't expect an individual operating a computer, even if that was done as a work duty, to have a recurrence or aggravation of epicondylitis, would you doctor?

A. No.¹⁰

¹⁰ Ketchum Depo. (July 20, 2005) at 13-20.

Dr. Warner, who is a chiropractor, saw claimant again on September 9, 2005, at the request of claimant's attorney. At that time, he found her unchanged from his examination on August 12, 2003, except that the tendinitis in the left elbow may have been a little worse and was starting to migrate to the upper arm and shoulder. He recommended that claimant continue with the restrictions outlined in his previous report of no repetitive use of the wrists and hands and no lifting over ten pounds with either hand. He also indicated that he agreed with Dr. Ketchum that Icy-Hot patches and Motrin were appropriate for claimant's condition. He would also, in addition, treat the elbows and wrists with electric muscle stimulation, massage and ultrasound. He reiterated that claimant's condition is chronic and that she will experience flare-ups, and said her problem is a continuation of her original injuries with respondent. However, Dr. Warner did not know whether there had been any aggravating activities that claimant had participated in since she last worked for respondent. He also stated that the progression of claimant's pain into her upper arm and shoulder is a natural progression for her type of disability.

Dr. Fevurly saw claimant again at the request of respondent on January 27, 2005. He found no change in claimant's objective testing from his April 2004 examination, but claimant did report an increased subjective worsening. His diagnosis was mild left medial epicondylitis with nonspecific bilateral arm pain. Dr. Fevurly attributed this to claimant's work at NCS Pearson. He stated he did not expect this subjective worsening would resolve because claimant has had this chronic pain for four years. Dr. Fevurly agreed with Dr. Ketchum's recommended course of treatment, Icy-Hot patches and Motrin. Other possible treatment would be a brace on the elbow, occupational therapy, Cortisone injections or, in rare circumstances, surgery. He indicated that claimant had already had therapy and injections and he did not recommend a repeat of those treatments. He believed there was no need for any further intervention or diagnostic evaluation. He testified that in his opinion, claimant would always have subjective complaints.

The Board finds that claimant has failed to prove a direct causal connection between her current left elbow symptoms for which she seeks treatment and her employment with respondent. Furthermore, the record fails to establish that her condition is a natural and probable consequence of her upper extremity injuries suffered by the series of accident that ended February 14, 2002. Accordingly, additional medical treatment benefits are denied.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order Regarding Post Award Medical Care of Administrative Law Judge Brad E. Avery dated October 11, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Attorney for Claimant
Matthew Crowley, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director